

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VENESSA DAVIS,

Plaintiff,

-vs-

**No. 1:18-cv-00215-MAT
DECISION AND ORDER**

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Venessa Davis ("Plaintiff"), represented by counsel, brings this action under Titles II and XVI of the Social Security Act ("the Act"), seeking review of the final decision of Nancy A. Berryhill, former Acting Commissioner of Social Security ("the Commissioner" or "Defendant"), denying her applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI").

Plaintiff filed a Motion for Judgment on the Pleadings (Docket No. 9-1), arguing that the residual functional capacity ("RFC") assessment was not supported by substantial evidence because the administrative law judge ("ALJ") relied on stale medical opinion evidence pre-dating significant changes in Plaintiff's condition, namely, her involvement in motor vehicle accidents in 2015 and 2016, and surgery to repair a right rotator cuff injury in October 2016. Plaintiff also argues that the ALJ improperly failed to weigh

the opinions of her treating chiropractor. Finally, Plaintiff contends that the RFC is not supported by substantial evidence because the ALJ failed to incorporate any limitations in the RFC based on her post-concussive headaches, which were found to be a severe impairment at step two.

In response, the Commissioner filed a Motion to Remand (Docket No. 12) the case for further administrative proceedings. Counsel for the Commissioner indicates that he contacted Plaintiff's attorney via telephone and email to inquire whether there were any objections to the motion to remand but never heard back from him. Plaintiff's counsel has not responded to the Commissioner's motion or otherwise registered any objection with the Court.

The Court sees no reason why the Commissioner's Motion to Remand should not be granted, given that Plaintiff also has requested remand in her Motion.

Accordingly, the Court **grants** Plaintiff's Motion to the extent that it requests reversal of the Commissioner's decision and remand for further administrative proceedings, and the Court **grants** the Commissioner's Motion to Remand for further administrative proceedings. The Clerk of Court is directed to enter judgment in favor of Plaintiff and close this case.

SO ORDERED.

s/ Michael A. Telesca

HONORABLE MICHAEL A. TELESKA
United States District Judge

Dated: September 25, 2019
Rochester, New York